

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY DIVISION**

**FRANK TREADWAY, et al.,
Plaintiffs,**

**Civil Action No. 5:16-cv-12149
Honorable Irene C. Berger**

v.

**BLUESTONE COAL CORP., et al.,
Defendants.**

MOTION TO ENFORCE SETTLEMENT

NOW COME the Plaintiffs, after attempting to confer with the opposing counsel, regarding the Defendants' substantial arrearages in settlement payments in this case---amounting to at least \$626,600.01 of unpaid funds as of March 17, 2019. The Plaintiffs have been unable to secure any response to those recent outreach and conferral efforts. Accordingly, Plaintiffs humbly MOVE that this Honorable Court order the Defendants to make all outstanding payments due under the settlement by no later than March 29, 2019, inclusive of all then-current penalties, so that the class payments may be issued beginning on or after that date in keeping with the terms of the class notice approved by this Court, and for appropriate sanctions. In support of this Motion, the Plaintiff states as follows:

1. On March 5, 2019, this Court entered an Order (ECF No. 42) approving the final settlement in this case.

2. Pursuant to that Order, the Defendants were subject, in pertinent part, to the following obligations:

- a. The Defendants agreed to pay \$782,000.00 in three equal installments by no later than: September 30, 2018, December 30, 2018, and October 23, 2019.
- b. The Defendants agreed to pay by June 23, 2018 a class representative fee of \$10,000.00 apiece, and a class administration fee of \$30,000.00 to Mountain State Justice for administering the settlement.

c. The Defendants agreed to pay a penalty of One Thousand Dollars (\$1,000.00) per day for each day that they are late in making payment to the class counsel, the class representatives, or to the class itself, with the right of a fifteen (15) day grace period. Should a payment be late and not cured within 15 days of the due date, then the penalty of One Thousand Dollars (\$1,000.00) for each such late payment will be retroactive to the original due date of the payment.

3. The Defendants had failed to make the payments by the timeline set in the Mediated Settlement Agreement, and the Parties entered a supplemental agreement for those funds to be paid on the following schedule:

- a. \$155,866.67 total of three payments due on January 18 to: 1) common fund, 2) class representatives, and 3) class counsel,
- b. \$155,866.67 total of three payments due on February 1 to: 1) common fund, 2) class representatives, and 3) class counsel,
- c. \$155,866.67 total of three payments due on February 15 to: 1) common fund, 2) class representatives, and 3) class counsel,
- d. \$155,866.67 total of three payments due on March 1 to: 1) common fund, 2) class representatives, and 3) class counsel,
- e. \$155,866.67 total of three payments due on March 15 to: 1) common fund, 2) class representatives, and 3) class counsel.

4. The Defendants made two initial payments, but then failed to make the three remaining payments by the deadlines set forth in the supplemental agreement of the Parties.

5. The Defendants currently owe the following amounts:

- a. \$155,866.67 – total of three payments due February 15 to: 1) common fund, 2) class representatives, and 3) class counsel,
- b. \$155,866.67 – total of three payments due March 1 to: 1) common fund, 2) class representatives, and 3) class counsel,
- c. \$155,866.67 – total of three payments due March 15 to: 1) common fund, 2) class representatives, and 3) class counsel,
- d. \$15,000 – late fees for the three payments that were due on February 1 and paid on February 6. (\$3,000/day x 5)
- e. \$90,000 – late fees for the three payments that were due on February 15 and not yet paid. (\$3,000/day x 30 as of 3/17)
- f. \$48,000 – late fees for the three payments that were due on March 1 and not yet paid. (\$3,000/day x 14 as of 3/17)
- g. \$6,000 – late fees for the three payments that were due on March 15 and not yet paid. (\$3,000/day x 2 as of 3/17)

6. Because the penalties of \$3,000.00 per day have been insufficient to catalyze compliance with this obligation under the Court's order, a more stringent sanction appears necessary in order to incent the Defendants to timely adhere to the Order of this Court.

WHEREFORE, Plaintiffs respectfully request that this Court hold a hearing to review the status of this settlement, that the Court order the Defendants to comply with the settlement terms set forth above by making the outstanding payment as soon as possible, and that the Court assess such further sanctions or penalties as it may deem necessary and just. Plaintiffs further request that they be awarded the reasonable fees and costs associated with preparing and prosecuting this Motion to Enforce, and such other relief that the Court deems equitable and just.

Plaintiffs,
Frank Treadway, Joey Clark Hatfield,
and Charles W. Hensley,
By counsel,

/s/ Samuel B. Petsonk
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